

## **MINUTES**

### **MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON ENERGY AND TELECOMMUNICATIONS**

**Call to Order:** By **CHAIRMAN MACK COLE**, on April 5, 2001 at 4:35 P.M., in Room 317 Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. Mack Cole, Chairman (R)  
Sen. Royal Johnson, Vice Chairman (R)  
Sen. Steve Doherty (D)  
Sen. Mike Halligan (D)  
Sen. Bea McCarthy (D)  
Sen. Walter McNutt (R)  
Sen. Don Ryan (D)  
Sen. Mike Taylor (R)  
Sen. Tom Zook (R)

**Members Excused:** Sen. Alvin Ellis Jr. (R)  
Sen. Corey Stapleton (R)

**Members Absent:** None.

**Staff Present:** Todd Everts, Legislative Branch  
Marion Mood, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted:  
Executive Action: HB 474  
HB 646

**Note:** Voting on HB 474 was postponed.

**EXECUTIVE ACTION ON HB 474**

**Todd Everts** announced that there were two sets of amendments for HB 474. **SEN. MIKE HALLIGAN** requested **Amendment #HB047402.ate, EXHIBIT (ens77a01)**.

**SEN. HALLIGAN** explained that it merely added the same language passed in other bills dealing with the universal system benefits program, to include conservation and renewable resources.

**Motion/Vote:** **SEN. HALLIGAN** moved that **AMENDMENT #HB047402.ATE BE ADOPTED**. Motion carried 9-0.

**Motion:** **SEN. COLE** moved that **AMENDMENT #HB047401.ATE BE ADOPTED**.

**Discussion:**

**Todd Everts** introduced **Amendment #HB047401.ate, EXHIBIT (ens77a02)**, by the bill's sponsor, saying it provided an exemption from the windfall profits tax for agencies of the U.S. government as well as qualifying facilities under PURPA. The other change allowed the default supplier to sell electricity to large customers, thereby removing the barriers as in SB 390.

**SEN. BEA MCCARTHY** asked for clarification of Section (6), subsection (2)(a). **Todd Everts** explained that the language which was stricken had restricted the ability of the default supplier to sell power to large customers; this was being amended to allow for that to happen. **SEN. MCCARTHY** then asked him to explain subsequent sections. **Mr. Everts** stated that the rest were current law.

**Vote:** Motion to **ADOPT Amendment #HB047401.ate CARRIED 9-0**.

**Motion:** **SEN. MCNUTT** moved that **HB 474 BE CONCURRED IN AS AMENDED**.

**Discussion:**

**SEN ROYAL JOHNSON** asked how much the windfall profits tax was. **Mr. Everts** explained that an equation was set up for the windfall tax, using a base of 5 cents per kilowatt hour, multiplying this by the amount of kilowatts generated and subtracting the company's total generation income; this represented the tax base amount which then was multiplied by 90%, resulting in the tax rate.

**SEN. MIKE TAYLOR** requested him to use numbers for this formula. **Mr. Everts** complied, using as an example a generation of 100 kilowatts which earned the company \$1,000; the 100 kilowatts was multiplied by 5 cents, and subtracted from \$1,000. The balance was \$995 which was the tax base; this 995 was multiplied by 90% which represented the tax, equaling the windfalls profits tax of \$895.50. He stated that the company would have received \$104.50 had they sold their power at 5 cents per kilowatt hour.

**SEN. DON RYAN** wondered, with this bill setting the rate at 5 cents, if power could be produced for less with different production methods, would the profit margins be different depending on the production. **Mr. Everts** was not sure he understood the question and repeated that the cap was 5 cents.

**SEN. RYAN** asked if it cost 4 ½ cents to produce the energy, he would have a ½ cent profit margin; if it cost 3 ½ cents, the profit margin would 1 ½ cents. He wondered if this windfall profit tax applied to all generation in the state. **Mr. Everts** replied this was true with the exception of government agencies which had been exempted.

**SEN. MCNUTT** asked if this included generation at MDU. **SEN. HALLIGAN** was not sure, since the bill said there would not be a windfall profits tax for rates below 5 cents. **SEN. TOM ZOOK** wondered if it kicked in at 5 cents or 5.001 cents. **Mr. Everts** replied that they get to recoup a 5 cent cost. **SEN. ZOOK** felt it had to be 5 cents plus before it would be applicable.

**SEN. MCARTHY** inquired who was exempt. **Mr. Everts** replied that the amendments exempted agencies of the U.S. government, and facilities qualifying under PURPA (Public Utility Regulatory Policies Act). **Tom Ebzery** was sure that there was no exemption for MDU or any of the out of state utilities selling within a regulated market.

**SEN. ZOOK** asked if the effective date of July 1, 2001 was what the committee wanted. **Todd Everts** replied that the sponsor had chosen that date. **SEN. RYAN** wondered if a company was forced by FERC to sell power to California, would they still be taxed if the rate went above 5 cents. **Mr. Everts** explained that the windfall profits tax was based on the sale of electricity generated in Montana; this bill set the profit at 5 cents. **SEN. RYAN** wanted to know how much energy was produced in Colstrip 4. **CHAIRMAN MACK COLE** asked **Ken Morrison** to respond to this question. **Mr. Morrison** did not think that any of the Colstrip 4 power stayed in the state, PPL Montana did not own any part of Colstrip 4 while they did own 30% of Colstrip 3, and that power went into the mix for MPC customers. **CHAIRMAN COLE** asked if

Colstrip 1 and 2 were totally owned by PPL Montana, and **Mr. Morrison** replied that ownership was evenly split between PPL Montana and Puget Electric. **Tom Ebzery** asserted that Colstrip 4 was owned by the four utilities he represented, and all of their production went out of state.

**SEN. TAYLOR** asked how much time the contract specified. **Tom Ebzery** said that **Dennis Lopach** indicated it went through 2010 or 2011.

**SEN. HALLIGAN** asked for a summary of the incentives in HB 474. **Mr. Everts** explained that this bill was a mechanism to utilize the windfall profits tax, and to back the ability to create up to 250 megawatts from new generation projects. **SEN. HALLIGAN** asked if part of the money could be used to buy down rates. **Mr. Everts** confirmed this, pointing to Section (2) on page 5. **SEN. HALLIGAN** inquired what percentage was to be used to buy down rates. **Mr. Everts** stated it was a contract term which required that the project have a term of not less than 15 years, with the default supplier being a successor in interest, and the terms of the contract would collateralize the project itself. **SEN. HALLIGAN** surmised, then, that there was no method of buying down the rates.

Since it seemed that there was more work to be done on HB 474, **CHAIRMAN COLE** withdrew his motion.

#### **EXECUTIVE ACTION ON HB 646**

**SEN. RYAN** informed the committee that this bill had been brought back on the floor, and the sponsor of HB 646 had agreed to add an amendment, moving the tax break from ten years back to two. He thought this might be rejected in the House, and the sponsor wanted to have it go into a Conference Committee to tie it in with **SEN. COLE's** bill.

**Motion/Vote:** **SEN. COLE** moved **THAT THE AMENDMENT TO HB 646 FROM TEN TO TWO ON LINE 22 BE ADOPTED**. Motion carried 9-0.

**Motion/Vote:** **SEN. RYAN** moved that **HB 646 BE CONCURRED IN AS AMENDED**. Motion carried 9-0. **SEN. RYAN** will carry the bill on the Senate floor.

**Note:** The amendment was submitted to the secretary on April 6, 2001, and labeled **EXHIBIT(ens77a04)**.

**{Tape : 1; Side : B}**

**EXECUTIVE ACTION ON HB 643**

**SEN. STEVE DOHERTY** stated that he had an amendment for HB 643 which had failed the day before, dealing with tax incentives, #HB064302.ate, **EXHIBIT (ens77a03)**.

**Motion:** **SEN. DOHERTY** moved that **AMENDMENT #HB064302.ATE BE ADOPTED.**

**Discussion:**

**Todd Everts** explained that HB 643 created an exemption from a limitation on a credit. Currently, the credit at the state level was about 30% of eligible cost for wind generation, and the limitation was that it could not exceed a combined state and federal credit of 60%. With this bill, the qualifying company would be exempt from that limitation, meaning the credit could be higher than the 60% of eligible cost. **SEN. JOHNSON** wondered if it could be as high as 100%. **Mr. Everts** replied it would depend on what the combination of federal and state credits would be.

**SEN. TAYLOR** asked why the definition of cost of production was handled differently in this bill. **SEN. DOHERTY** answered that this language was almost identical to that in **SEN. TAYLOR's** bill with regards to the cost production and the 33% being offered. **SEN. TAYLOR** contradicted, asking **Mr. Everts** for clarification. **Mr. Everts** confirmed it was the same as **SEN. ELLIS's** amendment. **SEN. TAYLOR** asserted the definition was the same, where the cost of production is divided by the output, and he went over the rate determination again, saying once the cost was determined, the commission would decide on a reasonable rate of return.

**SEN. ZOOK** admitted this amendment made it a better bill but he still could not vote for it.

**Vote:** Motion **carried 9-0.**

**Motion/Vote:** **SEN. DOHERTY** moved that **HB 643 BE CONCURRED IN AS AMENDED. Motion carried 9-2 with Johnson and Zook voting no. SENS. STAPLETON and ELLIS** voted **aye** by proxy.

**ADJOURNMENT**

Adjournment: 5:15 P.M.

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SEN. MACK COLE, Chairman

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MARION MOOD, Secretary

MC/MM

**EXHIBIT (ens77aad)**